

Subpart H [Reserved]

Subpart I—Floor Stocks Tax on Cigarettes Held for Sale on January 1, 1991 and on January 1, 1993

- 296.191 Scope of subpart.
- 296.192 Meaning of terms.
- 296.193 Alternate methods or procedures.
- 296.194 Scope of tax.
- 296.195 Rate of tax.
- 296.196 Payment of tax.
- 296.197 Return.
- 296.198 Inventory.
- 296.199 Retention of records.
- 296.200 Refund of floor stocks tax.
- 296.201 Penalties and interest.
- 296.202 Authority of ATF officers.

AUTHORITY: 18 U.S.C. 2341-2346, 26 U.S.C. 5708, 5751, 5761-5763, 6001, 6601, 6621, 6622, 7212, 7342, 7602, 7606, 7805, 44 U.S.C. 3504(h), 49 U.S.C. 782.

CROSS REFERENCE: For exportation of tobacco materials, tobacco products, and cigarette papers and tubes, without payment of tax, or with drawback of tax, see part 290 of this subchapter.

Subpart A—Application of 26 U.S.C. 6423, as Amended, To Refund or Credit of Tax on Tobacco Products, and Cigarette Papers and Tubes

SOURCE: T.D. 6395, 24 FR 599, Jan. 28, 1959, unless otherwise noted. Redesignated at 40 FR 16835, Apr. 15, 1975.

GENERAL

§296.1 Scope of regulations in this subpart.

The regulations in this subpart relate to the limitations imposed by 26 U.S.C. 6423, on the refund or credit of tax paid or collected in respect to any article of a kind subject to a tax imposed by 26 U.S.C. chapter 52.

[T.D. ATF-48, 44 FR 55857, Sept. 28, 1979]

§296.2 Meaning of terms.

When used in this subpart, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, terms shall have the meaning ascribed in this section.

Article. The commodity in respect to which the amount claimed was paid or collected as a tax.

Claimant. Any person who files a claim for a refund or credit of tax under this subpart.

Director. The Director, Bureau of Alcohol, Tobacco and Firearms, the Department of the Treasury, Washington, DC.

Owner. A person who, by reason of a proprietary interest in the article, furnished the amount claimed to the claimant for the purpose of paying the tax.

Person. An individual, a trust, estate, partnership, association, company, or corporation.

Regional Director (compliance). The principal ATF regional regulatory official responsible for administering regulations in this subpart.

Tax. Any tax imposed by 26 U.S.C. chapter 52, or by any corresponding provision of prior internal revenue laws, and in the case of any commodity of a kind subject to a tax under such chapter, any tax equal to any such tax, any additional tax, or any floor stocks tax. The term includes an exaction denominated a "tax", and any penalty, addition to tax, additional amount, or interest applicable to any such tax.

[T.D. 6395, 24 FR 599, Jan. 28, 1959. Redesignated at 40 FR 16835, Apr. 15, 1975]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §296.2, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§296.3 Applicability to certain credits or refunds.

The provisions of this subpart apply only where the credit or refund is claimed on the grounds that an amount of tax was assessed or collected erroneously, illegally, without authority, or in any manner wrongfully, or on the grounds that such amount was excessive. This subpart does not apply to:

- (a) Any claim for drawback,
- (b) Any claim made in accordance with any law expressly providing for credit or refund where an article is withdrawn from the market, returned to bond, lost, or destroyed, and
- (c) Any claim based solely on errors in computation of the quantity of an article subject to tax or on mathematical errors in computation of the amount of the tax due, or to any claim in respect of tax collected or paid on an

article seized and forfeited, or destroyed, as contraband.

[T.D. 6395, 24 FR 599, Jan. 28, 1959. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-42, 42 FR 8372, Feb. 10, 1977]

§ 296.4 Ultimate burden.

For the purposes of this subpart, the claimant, or owner, shall be treated as having borne the ultimate burden of an amount of tax only if:

- (a) He has not, directly or indirectly, been relieved of such burden or shifted such burden to any other person,
- (b) No understanding or agreement exists for any such relief or shifting, and
- (c) If he has neither sold nor contracted to sell the articles involved in such claim, he agrees that there will be no such relief or shifting, and furnishes bond as provided in § 296.10.

§ 296.5 Conditions to allowance of credit or refund.

No credit or refund to which this subpart is applicable shall be allowed or made, pursuant to a court decision or otherwise, of any amount paid or collected as a tax unless a claim therefor has been filed, as provided in this subpart, by the person who paid the tax and the claimant, in addition to establishing that he is otherwise legally entitled to credit or refund of the amount claimed, establishes:

- (a) That he bore the ultimate burden of the amount claimed, or
- (b) That he has unconditionally repaid the amount claimed to the person who bore the ultimate burden of such amount, or
- (c) That (1) the owner of the article furnished him the amount claimed for payment of the tax, (2) he has filed with the regional director (compliance) the written consent of such owner to the allowance to the claimant of the credit or refund, and (3) such owner satisfies the requirements of paragraph (a) or (b) of this section.

§ 296.6 Requirements for persons intending to file claim.

Any person who, having paid the tax with respect to an article, desires to claim refund or credit of any amount of

such tax to which the provisions of this subpart are applicable must:

- (a) File a claim, as provided in § 296.7,
- (b) Comply with any other provisions of law or regulations which may apply to the claim, and
- (c) If, at the time of filing the claim, neither he nor the owner has sold or contracted to sell the articles involved in the claim, file a bond on Form 2490, as provided by § 296.10.

CLAIM PROCEDURE

§ 296.7 Execution and filing of claim.

Claims to which this subpart is applicable shall be executed on Form 2635 (5620.8) in accordance with instructions on the form and shall be filed with the regional director (compliance) for the region in which the tax was paid. (For provisions relating to hand-carried documents, see § 70.304 of this chapter.) The claim shall set forth each ground upon which the claim is made in sufficient detail to apprise the regional director (compliance) of the exact basis therefor. Allegations pertaining to the bearing of the ultimate burden relate to additional conditions which must be established for a claim to be allowed and are not in themselves legal grounds for allowance of a claim. There shall also be attached to the form and made a part of the claim the supporting data required by § 296.8. All evidence relied upon in support of such claim shall be clearly set forth and submitted with the claim.

[T.D. 7008, 34 FR 3672, Mar. 1, 1969. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-48, 44 FR 55857, Sept. 28, 1979; T.D. ATF-251, 52 FR 19342, May 22, 1987; T.D. ATF-301, 55 FR 47658, Nov. 14, 1990]

§ 296.8 Data to be shown in claim.

Claims to which this subpart is applicable, in addition to the requirements of § 296.7, must set forth or contain the following:

- (a) A statement that the claimant paid the amount claimed as a "tax" as defined in this subpart.
- (b) Full identification (by specific reference to the form number, the date of filing, the place of filing, and the amount paid on the basis of the particular form or return) of the tax forms